

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re: : Case No. 05-44481
:
DELPHI CORPORATION, et al, :
:
One Bowling Green
:
New York, NY
Debtors. : November 4, 2005
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TRANSCRIPT OF FIRST-DAY HEARINGS
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE COURT: Please be seated. All right. Delphi
2 Corporation.

3 MR. BUTLER: Your Honor, good morning. Jack Butler
4 from Skadden, Arps, Slate, Meagher & Flom, LLP with my
5 colleague and partner, Kayalyn Marafioti here for the November
6 4th adjourned hearing and set hearing agenda.

7 Your Honor, we did file a proposed hearing agenda.
8 With the Court's permission, we would file the agenda.

9 THE COURT: Right. That's fine.

10 MR. BUTLER: Your Honor, the first matter on the
11 agenda is a first-day motion involving interim compensation
12 procedures and proposing the establishment of a joint fee
13 review committee. This matter was adjourned in response to
14 Docket No. 11, has been adjourned from the first-day hearings
15 until today.

16 There was an agreement reached, Your Honor, with the
17 United States Trustee on the form of the order dealing with
18 interim compensation procedures, and at the U.S. Trustee's
19 request, the matters relating to the establishment of a joint
20 fee review committee have been adjourned to November 29th --
21 this hearing further discussion with the committee and the
22 trustee.

23 THE COURT: Okay. All right. Are there any comments
24 on the proposed final order?

25 I put in as a noticed party the members of a fee

1 committee to the extent it's not duplicative of the other
2 noticed parties, just to indicate that I think -- as all the
3 parties seem to think there should be a fee committee in this
4 case.

5 So -- and the only other change I had is that if
6 someone can't -- for some reason can't get onto ECF to get the
7 applications, then they can make a request in writing to the
8 professional for an application, but other than that, I have no
9 comments and would approve it.

10 MR. BUTLER: Thank you, Your Honor.

11 Your Honor, in addition, just as I think the Court
12 knows, in this case, we're maintaining a virtual docket on
13 delphidocket.com. So there's another way at all those
14 documents, too, if you can't get them through PACER.

15 THE COURT: Okay.

16 MR. BUTLER: Your Honor, the -- I'd like it if the
17 Court will permit to take matters two, three, four, five, six
18 and seven together. These are retentions in which the Court
19 has already entered interim orders.

20 The Skadden retention is Item No. 2 at Docket No. 47.
21 The Togut Segal retention is Agenda Item No. 3 at Docket No.
22 48. The Sherman retention is Agenda Item No. 4 at Docket No.
23 49. The Groom Law Group retention is Agenda Item 5 and Docket
24 No. 50. The O'Melveny Meyer's retention is Agenda Item No. 6
25 and Docket No. 51, and the FTI retention is Agenda Item No. 7

1 and Docket No. 53.

2 Your Honor had entered interim orders. These had
3 been set for final hearing on October 27th at the request of
4 the creditors' committee so they could complete their review
5 and due diligence. They were adjourned to today. My
6 understanding is the committee has no retention issues, and the
7 U.S. Trustee has approved the form of proposed final orders.

8 THE COURT: Okay.

9 MR. ROSENBERG: Your Honor, just one comment there. I
10 was -- did you include, Mr. Butler, I'm sorry, the Togut Segal
11 one in that?'

12 MR. BUTLER: Yes, I did.

13 MR. ROSENBERG: Okay. I looked at the markup that I
14 received at about 7 a.m. this morning focusing particularly on
15 Togut Segal conflicts counsel, and Mr. Butler uses a term in
16 there, something like -- I don't have it in front of me because
17 it was on my Blackberry -- something like, you know, conflict
18 measurement points --

19 THE COURT: Yeah. I didn't understand that either.

20 MR. ROSENBERG: Yeah. I think he's referring to the
21 U.S. Trustee's kind of rule of thumb of one percent, although
22 he doesn't say that in there.

23 Is that what you intended, Mr. Butler?

24 MR. BUTLER: Actually, Your Honor, those were Ms.
25 Martini's words, not mine.

1 THE COURT: All right.

2 MR. BUTLER: The language that was given was given
3 from the U.S. Trustee.

4 THE COURT: All right.

5 MR. BUTLER: It was intended to address the threshold
6 that is applied in this district which is the one for sent
7 threshold, and that language which was reviewed with Mr. Togut
8 and his firm and with us and our firm by Ms. Martini and Ms.
9 Leonard --

10 THE COURT: Well, I don't -- I never heard of that
11 threshold before. I'm sure the U.S. Trustee has it, but I'm
12 not sure -- does it mean that that is the threshold for
13 retaining conflicts counsel, that it's likely that there will
14 be a --

15 MR. BUTLER: Your Honor --

16 THE COURT: -- more than a one-percent conflict?
17 Because you always have a -- I mean, you're not relieved of a
18 conflict just because it's less than one percent.

19 MR. BUTLER: Correct. Your Honor --

20 THE COURT: Okay.

21 MR. BUTLER: -- the position of the U.S. Trustee as I
22 understand it in this district and Mr. Togut can address it
23 seeing as he is a conflicts counsel in many of the cases in
24 this district is the U.S. Trustee requires whenever the lead
25 327(a) counsel discloses in their disclosure affidavits that

1 they have firms -- or that they have clients that represent
2 more than one percent of the revenues of the company -- of the
3 firm, the U.S. Trustee requires the appointment of conflicts
4 counsel in this district.

5 The U.S. Trustee also requires that with respect to
6 things that are directly adverse to those one-percent clients,
7 meaning they file objections, even though it may not be a
8 conflict under the ethical rules, the U.S. Trustee requires the
9 early involvement and potential takeover of that issue --

10 THE COURT: Just in case it gets into a conflict.

11 MR. BUTLER: Right. As it relates to those that --
12 and below that one percent, the U.S. Trustee leaves it to, in
13 this case, Skadden and Togut to coordinate with each other, and
14 if there's an actual conflict, we're not relieved of the
15 conflict rules. We have to follow our ethical
16 responsibilities, but that is the line that has been drawn, and
17 in discussions between Mr. Togut and myself and Ms. Martini's
18 office, that is the way she wanted this order to come out.

19 THE COURT: Okay.

20 MR. ROSENBERG: Okay. Your Honor, I guess my point
21 was simply, and I think that Mr. Butler clarified it somewhat,
22 I read that order to mean automatic referral to Mr. Togut for
23 anything over one percent and that's obviously fine. I did not
24 read anything in there that said that, you know, anything under
25 one percent which is still a potential conflict issue will be

1 discussed and decided what to do but I believe Mr. Butler just
2 said that, and that was the piece I was focused on.

3 THE COURT: Okay.

4 MR. BUTLER: As I did in my separate letter to Mr.
5 Rosenberg this week.

6 THE COURT: Okay. So this doesn't reduce
7 responsibility to deal with conflicts that actually enhances it
8 in the situation where there's a potential for -- and a need
9 for an automatic turnover.

10 MR. BUTLER: That's correct, Your Honor.

11 THE COURT: So, with that clear on the record, and
12 knowing that where the language came from, I'm comfortable with
13 it.

14 MR. TOGUT: Since I was invited to make a statement, I
15 think I will.

16 THE COURT: Okay.

17 MR. TOGUT: As -- in the discussions between Mr.
18 Butler and me, the starting point which was emphasized
19 repeatedly is that Skadden does things right, and so this order
20 in a large degree I think is just memorializing a concept, but
21 I am quite confident in the discussions we've had that the
22 following will occur.

23 If there is a Skadden client involved in a matter
24 that may turn adverse, Skadden will advise me of that and I
25 will be involved in the matter so that if there needs to be a

1 handoff to me to actually take over that matter because it is
2 adverse, I can do that.

3 And I am very comfortable based on the conversations
4 that Skadden's only desire is to do the right thing and the
5 ethical thing in this case.

6 THE COURT: Okay. All right. Very well.

7 So, with that clarification, I'm prepared to approve
8 the Togut, Segal & Segal application as well as the others.
9 The only -- I just have a note on the other orders for the
10 various special counsel to remind them that there should be no
11 duplicate charges for duplicate services.

12 My experience is that particularly with non-
13 bankruptcy lawyers, sometimes they get -- they forget about
14 that, and this is just a reminder.

15 MR. BUTLER: Thank you, Your Honor.

16 Your Honor, the next matter on the agenda which is
17 Agenda Item No. 8, Docket No. 54 is the debtors' application
18 for the appointment of Kurtzman Carson Consultants, LLC as
19 claims noticing and balloting agent for the clerk of the
20 Bankruptcy Court.

21 Your Honor, there is a revised form of order that we
22 have submitted to the Court that has been approved by the
23 United States Trustee's Office. This case also marks I think a
24 point in which the United States Trustee's Office has been
25 working on a protocol for dealing with claims agents and how

1 they -- their compensation is reviewed in a more systematic way
2 than it has in the past, and there's been extensive
3 conversations between KCC and the United States Trustee's
4 Office about that, and the order here unlike some prior orders
5 in the district actually subjects KCC to the review, not
6 necessarily the same legal standards, but to the review of the
7 monthly interim compensation procedures and to the review of a
8 fee committee that's appointed and so forth, which is different
9 than has been occurred in the past.

10 As I understand it, it's been agreed to by KCC -- I'm
11 advised Mr. Howard Glostein (ph) is the senior bankruptcy
12 consultant of Kurtzman Carson is in the courtroom today, but I
13 am advised that KCC has agreed to the protocol requested by the
14 United States Trustee as agreed to the form of the order, and
15 this among other things will address a request of the
16 creditors' committee that they have an opportunity to review on
17 a systematic basis these fees and expenses.

18 THE COURT: Okay. My understanding of the services
19 provided by KCC and similar firms is that they truly are as the
20 order says stepping into the shoes of the clerk of the court.
21 They're not doing other services beyond what the clerk would
22 do, which include, as the clerk would do if there were a
23 smaller case, doing various runs of claims as requested by the
24 parties to see, you know, what categories they fall into.
25 So...

1 And, similarly, my understanding is that the fees
2 they charge are the same fees that the clerk would charge, and
3 therefore, it's not really a 330 type of review process or 331
4 process. It's just looking to make sure that they're doing the
5 same -- the same schedule.

6 So I think it's probably pretty minimal due
7 diligence, but it's worth doing that due diligence as the case
8 goes on.

9 MR. BUTLER: Thank you, Your Honor.

10 THE COURT: So, with those caveats, I'll approve it.

11 MR. BUTLER: Thank you, Your Honor.

12 Your Honor, the next matter on the agenda, Agenda
13 Item No. 9 and Docket No. 55 is our motion for an ordinary
14 course procedures order in this case.

15 The final order, Your Honor, which has been reviewed
16 with both the United States Trustee and the creditors'
17 committee takes a different tact than had been originally
18 proposed in the motion, and rather than have a multiple-tier
19 arrangement here, the U.S. Trustee has requested and we have
20 agreed that any professional who might otherwise qualify as the
21 ordinary course professional, the charges monthly professional
22 fees that exceed \$50,000 in any month or \$500,000 in the
23 aggregate over the course of these cases will be required to
24 file a separate retention application and go through that
25 process, and we have agreed to that.

1 We had sort of a different approach in the original
2 motion which had sort of a tiered arrangement. This is where
3 we've ended up, and the form of order that's been submitted,
4 Your Honor, has been agreed to by the trustee -- the Trustee's
5 Office, has been reviewed with the creditors' committee and
6 with the debtors.

7 THE COURT: Okay. I just had two small questions on
8 this. Do you really need Sherman & Sterling as one of the
9 parties reviewing the bills? Do they actually perform that
10 function along with Skadden or can you take them out?

11 MR. BUTLER: We can probably take them out, Your
12 Honor.

13 THE COURT: Just again to avoid duplication, and then
14 I'd put in the fee committee to the extent that there's not
15 duplication of the notice, if there are other people that are
16 already getting the notice on the committee.

17 MR. BUTLER: Thank you, Your Honor. We'll make those
18 changes.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, the next matter on the agenda
21 is Matter No. 10, Docket No. 24, which is our cash management
22 order. This is the place and time for a final hearing in
23 connection --

24 THE COURT: I'm sorry. Did we miss FTI?

25 MR. BUTLER: I'm sorry, excuse me.

1 THE COURT: Did we cover FTI? I don't think we did.

2 MR. BUTLER: My apologies. Yes, FTI I thought was the
3 original -- was one of the original group of applications.

4 THE COURT: Oh, all right. That's fine. Well, I
5 thought you were just doing the offerings, but does anyone have
6 anything to say on FTI? I don't, and I'm prepared to approve
7 it as well.

8 MR. BUTLER: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, then turning to Matter No.
11 10, which is the cash management matter, and this is Docket No.
12 24, this is, Your Honor -- was put on today's agenda really as
13 a settlement matter of the rulings Your Honor made at the
14 October 27th hearing with respect to cash management.

15 We actually have a final form of order that we are
16 submitting to the Court which is consistent with the rulings
17 last week. We have agreed to put on the record here in
18 response to some discussions subsequent to the hearing with the
19 creditors' committee that to the extent that we enter into new
20 loan transactions with non-debtors which are not under this
21 cash management order subject to a lien arrangement, that we
22 will give prior notice to the creditors' committee so that
23 they're aware of those transactions.

24 And, if the committee feels that they need to come to
25 court on those issues, then they will have -- they will have

1 prior notice so they can take whatever action they think they
2 need to take.

3 MR. ROSENBERG: Your Honor, if I may, a little more
4 background on this, because it is a very, very significant
5 matter to the committee.

6 Unfortunately, we discovered at about 4:59 on the
7 Friday following the Thursday at which we had the dialogue with
8 the Court, and the Court ruled on certain matters that we must
9 have been talking past each other, because when we saw the
10 final form of order that Skadden was prepared to submit and we
11 saw these provisions that are relevant for the first time, we
12 saw that contrary to what the committee believed had been
13 decided that pursuant to the cash management system, the only
14 liens that the debtor was agreeing to grant were in situations
15 where the borrower was also a debtor, thereby excluding
16 entirely from the lien process that we thought had been agreed
17 upon U.S. non-debtors and all of the foreign companies which,
18 of course, are non-debtors.

19 With additional diligence and, again, the usual
20 cooperation that's developed extremely well between FTI and
21 Mesereau (ph), subsequent discussions when I asked that this be
22 held up because, again, this was not at all what we thought we
23 had agreed to, subsequent discussions indicated the following:
24 Number one, it would be a most unusual situation where a loan
25 was made under the cash management process from a debtor to a

1 foreign entity, and an even more unusual situation if one were
2 made from a debtor to a U.S. non-debtor, and indeed, only one
3 such was even conceivably contemplated, and that wouldn't be
4 even in calendar year 2005.

5 On that basis and that basis -- and those
6 representations, the committee is agreeing to the entry of this
7 order which again limits the liens to situations where there is
8 a debtor borrower involved with a complete reservation of
9 rights, treating it almost as an adjournment, if you will, if
10 the issue does come up and the other two situations that are
11 not covered, and we can't otherwise resolve it.

12 THE COURT: Okay.

13 MR. BUTLER: All right.

14 THE COURT: All right. Go ahead.

15 MR. BUTLER: Your Honor, on that, the only thing I
16 would add to the record is that what we did in the cash
17 management order is exactly what was discussed at the October
18 27th hearing; that is, we reached a settlement with the PBGC,
19 and they had a particular universe of liens they wanted to put
20 in place, and the arrangement was supposed to be that the cash
21 management order would track the financing order as to that
22 universe and as to those liens, which is exactly what we did,
23 and the PBGC did not require liens of the foreign entities nor
24 would we have agreed to them, in part because of the bimodal
25 message we explained to the Court when we first came to the

1 Court back at the beginning of October.

2 However, in an effort to try to cooperate with the
3 committee, we have agreed to this arrangement that said if we
4 propose a new loan transaction with respect to the non-debtor
5 entities, be they foreign or domestic, we will give prior
6 notice to the financial advisers to the creditors' committee.

7 THE COURT: Okay. All right. I added one other point
8 that I think was both implicit and explicit, and usually I
9 don't add these types of things because I think it's
10 unnecessary because it's always there in the law, but just
11 because this deals with this inter-company transactions and
12 could be viewed to bless them as opposed to set out a mechanism
13 for doing them.

14 I've added in Paragraph -- at the end of Paragraph
15 15:

16 "Nothing in this order relieves any debtor or any
17 other person or entity of its fiduciary duties with respect to
18 entering into any inter-company transaction."

19 And that's obviously something that debtors and other
20 parties have anyway, but this just makes it clear that if
21 there's going to be a transaction between companies that the
22 parties need to look at it independently from each side to make
23 sure it makes sense in light of their fiduciary duties, but
24 with those changes, I'm happy to approve this order.

25 MR. BUTLER: Thank you, Your Honor.

1 Your Honor, the next matter on the agenda, Matter No.
2 11 and Docket No. 12 on the Court's docket is our motion on
3 human capital obligations. A final order had been entered in
4 connection with this motion subject to a right of review to the
5 creditors' committee following its organization.

6 On October 25th, the creditors' committee filed a
7 statement with respect to certain matters under the human
8 capital obligations motion. There has been extensive due
9 diligence since that time, and we have submitted a revised
10 order to the Court that resolves all matters under that
11 statement so that the order can -- an amended final order can
12 be entered.

13 The one issue that remains under a continued study by
14 the committee is the performance achieve plan awards under the
15 debtors' 2003 to 2005 long-term incentive program. We've
16 agreed we'll make no payments on those until the earlier of an
17 agreement with the creditors' committee or January 31, 2006 and
18 there's a mechanism that provides that if the committee has
19 continuing concerns, they can file an objection in December and
20 this matter would come on -- this limited matter of the PAP
21 awards would come on for review by the Court as to whether it's
22 appropriate to be paid at the January 5th omnibus hearing.

23 THE COURT: Okay. Are those awards usually paid
24 around year end or the first month of the year?

25 MR. BUTLER: They're paid in the first quarter. These

1 will be paid normally in the first quarter of 2006.

2 THE COURT: Okay. So that sounds reasonable. All
3 right. Does anyone else want to be heard on this matter? Then
4 I'll approve it as resolved by the committee and the debtor.

5 MR. BUTLER: Thank you, Your Honor.

6 Your Honor, the next matter on the agenda and listed
7 on the contested docket but happily resolved is the reclamation
8 motion, Matter No. 12, listed at Docket No. 21. Here, too,
9 there was a final order of reclamation that had been ordered by
10 the Court subject to review mechanism with the creditors'
11 committee and on October 25th, the creditors' committee filed
12 an objection to the reclamation procedures seeking additional
13 oversight and settlement in payment of the reclamation claims.

14 The long and the short of the resolution here, Your
15 Honor, is found in Paragraph 3 of the proposed amended order in
16 which we have agreed that prior to returning any reclamation
17 goods or paying any -- or allowing any administrative claims or
18 making any payments of reclamation claims, we will provide a
19 comprehensive report containing information set forth in
20 Paragraph 3 to the committee for their review.

21 They will have an opportunity to object and come
22 before Your Honor within -- I think it's ten business days to
23 file an objection, and if they don't object, we can then
24 proceed as the order otherwise would have contemplated. If
25 they do object, then we come to Your Honor and we deal with

1 what we should do on those matters at that time.

2 And, as always, Your Honor, you know, moving forward
3 with reclamation is extremely important to maintaining a supply
4 network. Our suppliers expect we're going to efficiently go
5 forward and reconcile these reclamation claims. When that
6 process is completed, we certainly do not object to the
7 committee having a comprehensive look at the claims, both how
8 we've treated them on an individual and collective basis, and
9 also the overall issue of to what extent under applicable law
10 the claims are payable in this case.

11 Our own -- the debtors' own view is that the amount
12 of reclamation claims ultimately will even have to come under
13 that screen will be significantly reduced from the claims that
14 have been submitted because this is as Your Honor has heard in
15 this case, we have just-in-time inventory, and the reality is
16 that much of the inventory that's been claimed under the
17 reclamation procedures was, in fact, consumed prior to the
18 claim, and so that all -- but that all has to be worked
19 through, and the committee has now a process for them to review
20 it and to -- and for us to have a dialogue and try to work it
21 out prior to coming to the Court.

22 THE COURT: Okay. This contemplates that the first
23 version of the report will cover not the whole universe but 75
24 percent. It's contemplated that the debtor will be as
25 reasonably practical as possible, promptly as practical

1 updating that report and adding more into it?

2 MR. BUTLER: Yes, Your Honor. The idea would be --
3 the idea was that we don't -- we thought -- the committee had
4 expressed to us they wanted to have a large enough amount of
5 the work done that they could get a reasonably good overlook as
6 to the process, but to wait until the last few claims were
7 reconciled we thought was prejudicial --

8 THE COURT: Right.

9 MR. BUTLER: -- to the suppliers and to the process,
10 and so we struck this idea that, you know, it can come in
11 multiple reports, but the first report had to have this -- at
12 least a big chunk in it, 75 percent, and then we would submit
13 supplement reports on the balance.

14 THE COURT: Okay. All right. Well, with that
15 clarification, I'll approve the agreed-upon order.

16 MR. BUTLER: Thank you, Your Honor.

17 Your Honor, the next matters on the agenda and the
18 last two matters on the agenda which we'd like to take together
19 are the debtors' essential suppliers motion which is Agenda
20 Item No. 13 and Docket No. 17, and the debtors' foreign
21 creditors' motion which is Agenda Item No. 14 and Docket No.
22 18.

23 Your Honor, these also had final orders entered.
24 Both of them were subject to review by the creditors'
25 committee. The creditors' committee filed statements, one

1 statement covering both motions on October 25th raising certain
2 issues, the only one of which that remains unresolved is
3 whether there is a pre-notification and sort of tantamount to
4 an approval process with the committee before we can taken any
5 actions under these orders which respect to transactions
6 exceeding a million dollars.

7 The debtors were and the committee were unable to
8 resolve this. The debtors believe it is extremely important to
9 the viability of the company and to our supply chain network
10 that we have the ability to move forward and do what needs to
11 be done to protect the supply chain and provide a weekly report
12 and update so every week the committee knows what's going on
13 but not slow down the process.

14 These are -- and we have -- we're prepared on that,
15 Your Honor, to -- we have two witnesses and a slight short
16 evidentiary record on that. Mr. Rosenberg has been good enough
17 to indicate that he's willing to have us do that by proffer so
18 that we can get Mr. Sheehan's testimony and Mr. Eisenberg's
19 testimony before the Court, but this is not a procedural issue.
20 This is a substantive issue about how the debtors operate both
21 ordinary course and non-ordinary course programs at the
22 company.

23 THE COURT: I -- before we do that, I just had a
24 question about the language that was proposed. It says that
25 the report would be made to the committee professionals of all

1 transactions affected by the debtors pursuant to the order and
2 additional report on a transaction-by-transaction basis for
3 individual transactions in excess of two million.

4 What is the difference between the two?

5 MR. BUTLER: Well, Your Honor, what we have and we
6 have an exhibit to show Your Honor and put into evidence, but
7 we have developed a very comprehensive reporting system that
8 FTI and Mesereau worked out, which basically gives them a
9 weekly report on what's happening both in terms of a
10 distribution of suppliers, distribution of dollars, settlements
11 in progress, amounts that have been expended against what was
12 estimated in the first-day motions, sort of a one-page summary
13 of every transaction, sort of a score card, and that covers
14 everything.

15 THE COURT: And that, of course -- and the Mesereau
16 people can call up someone at FTI and say give me a little more
17 on this one or that one or --

18 MR. BUTLER: In fact -- in fact, Your Honor, they meet
19 every week by telephone to go over this and over the report and
20 then there's -- it's actually -- the report is actually five or
21 six pages long.

22 The next page actually stratifies by motion, it
23 doesn't cover just the foreign creditors and the suppliers but
24 a variety of other motions, what's -- a number of deals that
25 are involved -- implicate matters under 500,000 and then

1 between 500,000 and a million, a million and two million, two
2 million and five million and over five million, and then as to
3 anything that is over two million, there is an additional
4 report that gives detail regarding the supplier -- a
5 description of the supplier involved, what their reconciled
6 claim and what's been done with respect to under various
7 programs done with that, and so it gives additional detail.

8 THE COURT: All right. So the debtor is volunteering
9 more information on that even before Mesereau might ask about
10 it?

11 MR. BUTLER: Oh, absolutely.

12 THE COURT: Okay.

13 MR. BUTLER: And, in fact, there's a -- with respect
14 to the -- and, again, this will come into evidence, Your Honor,
15 with respect to the report, with respect to any matter
16 involving a transaction above two million, there's a
17 description of the business relationship, the financial
18 position, the request that was made and the outcome and the
19 reasons the debtor made the decisions that it made, and that's
20 -- all of this is done, and our proposal of the committee has
21 been that we continue this very detailed reporting system every
22 week until the end of the year, and then monthly thereafter so
23 that they can have a very good handle on what's happening.

24 What we've said we can't live with and Mr. Sheehan,
25 our chief restructuring officer is here to testify why, we

1 can't live with the idea that the creditors' committee
2 interjects themselves into the middle of our supply network and
3 says, no, you can't do something until -- you have to stop
4 everything you're doing and come and give us notification and
5 sit down and talk with us about what we -- about what you want
6 to do.

7 THE COURT: Well, let me -- Mr. Rosenberg, I don't
8 understand what the committee's objection is. Was it to
9 monitor this to make sure the debtors are complying with the
10 order or to have a veto on top of that?

11 MR. ROSENBERG: Your Honor, it is a former -- it is
12 more than the former. It is certainly not the latter, and with
13 all due respect to Mr. Butler, I think he is misstating what it
14 is we are seeking here. It is less, considerably less than
15 what Mr. Butler stated.

16 THE COURT: So it's not a veto.

17 MR. ROSENBERG: It is not a veto, it is not even a
18 discussion necessarily. It is a pre-notification of -- of
19 proposed transactions over a million dollars. Upon the
20 notification, the burden will be entirely on the committee to
21 do something, seek more information if it wants to, you know,
22 whatever, but we're talking about pre-notification of a very
23 small number of transactions.

24 And to tell you how few, Your Honor -- if this had
25 been in effect on day one of the case through today, there were

1 eight over \$1 million of foreign and four over \$1 million of
2 essential. All we're asking for here is an email, a telephone
3 call in advance that says the following are over a million
4 dollars, we're letting you know.

5 THE COURT: But then -- let me ask you. If that comes
6 to the committee or that we're ordering it to be coming to the
7 committee, then the committee wants the right to do what, to
8 come in and say, you know, this one really isn't from what we
9 know really should be -- really shouldn't be as part of the
10 vendor rescue program because it's different than the hallmark
11 so the vendor rescue program --

12 MR. ROSENBERG: Perhaps.

13 THE COURT: -- or this is over -- this is not a sole
14 source supplier from what we know, and therefore --

15 MR. ROSENBERG: Any of the above, Your Honor, but we
16 are not --

17 THE COURT: But it's not going beyond those categories
18 that were covered by the motion and the order?

19 MR. ROSENBERG: Oh, of course not, sir.

20 THE COURT: Okay.

21 MR. ROSENBERG: No, no. We're talking about -- you
22 know, when we're talking about a big one which we are defining
23 as over a million dollars, and I think that's a fair
24 characterization given the number of such transactions I just
25 indicated to you. We're not talking about hundreds or even

1 dozens here, we want to be able to say yeah, that's properly
2 within the program, but not to stop it, only if we then start a
3 process because we feel so strongly about it.

4 We're not seeking consultation automatically. We're
5 certainly not seeking to veto power. We're looking for a
6 simple notification. That's it.

7 MR. BUTLER: Your Honor, that --

8 MR. ROSENBERG: And, by the way, Your Honor, that we
9 settled all the dozens of matters involving hundreds of
10 millions of dollars that Mr. Butler just went through and yet
11 we're here on this seemingly small point tells you how strongly
12 the committee feels about it.

13 THE COURT: Okay. All right.

14 MR. BUTLER: Your Honor, I think both the committee
15 and the debtors can take equal credit in having worked out all
16 the committee's concerns other than this.

17 THE COURT: That's fair.

18 MR. BUTLER: The company is here because it does not
19 believe that the committee should intervene and inject itself
20 into our ordinary course operations, before we actually do
21 something, and by the way, Your Honor, they say a million
22 dollars is a big deal. This is a \$28 billion revenue company.
23 We have a billion dollars a month in transactions with vendors.

24 A million-dollar issue in this -- in the context of
25 this case is not a big deal, and oh, by the way, the only issue

1 between us, the debtors have and that's why we wanted to put
2 the testimony because we think it's a compelling case, Your
3 Honor. The fact is the debtors are prepared every week to give
4 full detailed comprehensive disclosure to the creditors'
5 committee, and if they've got an issue, they can raise it. All
6 right.

7 And what you have to balance is the prejudice that
8 somehow or other we might have done a transaction or two they
9 don't like which maybe then can upset although I doubt it given
10 what we have put in place here -- the company has put in place
11 versus having them interfere with our -- the operation of these
12 programs, which are very time sensitive.

13 Some of these decisions are made in a matter of
14 hours, and I can put the testimony on, but Mr. Rosenberg is not
15 saying what his financial advisors have been saying. They said
16 as to each of these things, they wanted a written presentation,
17 they wanted background documentation, they wanted a telephone
18 conference with the financial advisors, and Mr. Eisenberg will
19 testify as to each of those matters.

20 That was what was requested. All right. And it is -
21 - you know, it is -- we think, Your Honor, when we're saying on
22 a weekly basis we'll sit down and give you all this information
23 and go over anything you want to talk about, that should be
24 sufficient for the committee to have a feel for how things are
25 going, and oh, by the way, Your Honor, we've been doing this

1 since the inception of the case and the formation of the
2 committee.

3 I think this has gone on for three weeks now, and I
4 don't think that Mesereau has represented, as we get up and
5 testify to today, that they believe that what we have done has
6 been inappropriate in any way.

7 THE COURT: Of course, that cuts both ways. I mean,
8 that suggests that they wouldn't -- they wouldn't abuse their
9 right to come into court and ask for an order to show cause or
10 something like that because they're working with you all,
11 effectively.

12 I guess what I'm interested in is not a whole
13 showing, particularly given the clarifications on the record,
14 but as a practical matter how much forethought goes into
15 decisions to pay in excess of a million dollars and how long it
16 takes to implement the decision once it's made, so that as a
17 practical matter I can tell whether there's enough time to give
18 some advance notice to the committee, either telephonic -- you
19 know, whatever is practical, telephonic or written so that they
20 can know about it.

21 I mean, I'm assuming that -- maybe I'm wrong, but you
22 know, generally, to make a million-dollar transfer takes a
23 little bit of time, and it usually takes some forethought
24 before it's made, but maybe that's not the case here. That's
25 what I'm interested in focusing on.

1 MR. BUTLER: Your Honor, the testimony would be here,
2 and I think -- and certainly, Mr. Eisenberg and Mr. Sheehan are
3 both here and can answer whatever questions Your Honor wants
4 them to --

5 THE COURT: And I'm happy to take a proffer; that's
6 fine.

7 MR. BUTLER: Okay. The -- let me just walk through
8 and I'll --

9 THE COURT: You can go through the whole time, but
10 that's really what I want to focus on.

11 MR. BUTLER: Well, let me proffer the testimony. I'll
12 try and do it briefly, Your Honor, then of Mr. Eisenberg and
13 then of Mr. Sheehan.

14 Mr. Eisenberg, if called to testify would explain --

15 THE COURT: And he's with FTI for the record?

16 MR. BUTLER: Yes, sir. And would you stand, please,
17 Mr. Eisenberg?

18 Mr. Eisenberg would testify that he is a senior
19 managing director of FTI, and he would testify that the
20 automobile industry and Delphi -- that Delphi is a part of is
21 in severe distress, that that distress is causing the ultimate
22 manufacturing companies including GM and Ford who have suffered
23 double-digit percentage declines in unit sales to pressure
24 suppliers to reduce prices at a time when commodity price
25 increases have hurt the supply base because raw materials have

1 increased in price, particularly steel and resin.

2 Mr. Eisenberg would further testify that the volume -
3 - reduced volume of production together with these price
4 pressures and commodity increases has had a severe adverse
5 effect on suppliers in the industry which has also resulted in
6 the Chapter 11 cases of a number of the suppliers in the
7 industry.

8 With respect to the supply chain, Mr. Eisenberg would
9 testify that in the automotive industry, the supply chain
10 management has evolved so that suppliers are most -- in most
11 instances sole source suppliers. This is a method under which
12 the requirements for a particular part are purchased from one
13 supplier.

14 He would testify those parts are highly customized
15 and rigorously tested, and the ability of a company to go from
16 one supplier to another supplier is severely limited because in
17 that testing and validation process, in order to change a part
18 from a supplier takes months to be able to run the validation
19 tests and qualify a new part from a new supplier, so that it's
20 very difficult to replace suppliers in this industry in a short
21 term.

22 Mr. Eisenberg would also testify that a disruption
23 from any one supplier can cause any number of assembly plants
24 to completely shut down, and the company has estimated that a
25 shutdown caused by just one supplier not being able to get

1 their just-in-time inventory to the company could cost as much
2 as \$10 million per day per plant.

3 Mr. Eisenberg would testify that Delphi Supply
4 Management System is highly sophisticated and highly dependent
5 on the delivery of parts of its suppliers, and that it adopts
6 this just-in-time supply method that I have described.

7 Mr. Eisenberg would testify that this method means
8 the debtors do not maintain a significant inventory of the
9 components supplied by certain of the vendors. In many cases,
10 we have on hand less than twenty-four hours supply, and
11 accordingly, the debtors rely on daily shipments of components
12 from the vendors to keep manufacturing facilities operating.

13 Mr. Eisenberg would testify that the debtors' OEM
14 customers similarly do not keep a significant inventory of
15 Delphi's products on hand and rely -- again, a supply of less
16 than twenty-four hours and sometimes less than four to six
17 hours in many instances and rely upon frequent shipments of
18 those products to keep their manufacturing plants open.

19 Mr. -- with respect to the supplier process, Mr.
20 Eisenberg would testify that Delphi's process is designed to be
21 thorough but very rapid in its ability to analyze whether a
22 supplier fits into the program.

23 Mr. Eisenberg would testify that Delphi has dedicated
24 approximately 20 people on a full-time basis to evaluating and
25 processing such requests through a cross-functional team

1 involving global supply management, production control
2 logistics, treasury, legal departments and professional
3 advisors.

4 Mr. Eisenberg would testify that when determining
5 whether a creditor is an essential supplier or foreign
6 creditor, the Delphi has a team of people evaluating that
7 process on a real-time basis, and going through a lengthy
8 series of criteria to evaluate whether or not payments ought to
9 be permitted.

10 Mr. Eisenberg would testify that this process enables
11 Delphi to understand each requesting supplier's financial
12 situation as well as the company's vulnerability in the event
13 the supplier were to stop shipping.

14 Importantly, Mr. Eisenberg would testify that in
15 various instances, Delphi's essential supplier team is required
16 to review, approve and wire funds on the same day that the
17 request comes in because of the difficulty of the particular
18 supply problem that has been presented by the supplier.

19 Mr. Eisenberg would also testify that the company has
20 no way of knowing which of the requests that come in will
21 require same-day activity, but that there have been same-day
22 events that have occurred in the first thirty days of this
23 case.

24 With respect to foreign creditors, Mr. Eisenberg
25 would testify the debtors regularly transact business with

1 numerous foreign businesses, many of whom supply goods and
2 services that are crucial to the debtors' ongoing concerns and
3 would testify that it is typical for foreign creditors to
4 refuse to ship unless they get payment of their outstanding
5 liabilities under an order similar to the foreign creditors
6 order that's been approved in this case.

7 Mr. Eisenberg would testify that making sure there is
8 not a disruption in the shipment from foreign vendors is
9 critical since they are also part of Delphi's just-in-time
10 supply chain.

11 Mr. Eisenberg would also point out and testify that
12 pursuant to the authority obtained in this case, Delphi has
13 limited the parties who are eligible for foreign creditor
14 treatment to explicitly exclude foreign vendors, service
15 providers and other non-governmental entities that are known to
16 have substantial assets inside the United States and that the
17 Delphi investigates this matter to the extent it can on a real-
18 time basis to make sure that people otherwise qualify.

19 Mr. Eisenberg would also testify that he's been
20 personally involved in the vendor management process or
21 supplier process over the first three or four weeks of this
22 case and that foreign creditors have been particularly
23 aggressive in this case and have threatened to stop shipping
24 because of unpaid petition -- pre-petition claims which have
25 been largely resolved by the debtors' activities in this.

1 With respect to the results of the process, Your
2 Honor, in the first three weeks of the case, Mr. Eisenberg
3 would testify that as of October 28th, the debtors have
4 processed and either approved or rejected a total of 136
5 requests for central supplier treatment of which 116 requests
6 were rejected, but there are also 433 requests that remain in
7 the system that are being -- that are backlogged and being
8 examined.

9 Mr. Eisenberg would testify that in the foreign
10 creditor front, the debtors have resolved either by approval or
11 rejection a total of 86 requests with 49 rejections and 37
12 approvals but are continuing to examine 102 requests that are
13 in the system.

14 As a result, Mr. Eisenberg would say that some
15 requests are dealt with over a period of time, but again, a
16 number of requests and the most emergent requests are dealt
17 with on a same-day basis.

18 Mr. Eisenberg would further testify the debtors have
19 exercised the discretion granted to them extremely judiciously.
20 Again, as of October 28th, the debtors had approved payment of
21 less than six percent of all suppliers requesting payment under
22 the essential supplier order, and less than 15 percent of all
23 creditors requesting payment under the foreign creditor order.

24 And, as of October 28th, the debtors have used less
25 than -- strike that, less than 24 percent of the financial

1 authority granted to them under the essential supplier order
2 and less than 60 percent of the financial authority that was
3 estimated as an estimate in the foreign creditor.

4 With respect to committee reporting date, Your Honor,
5 Mr. Eisenberg would testify that the creditors committee has
6 been fully apprised of the actions that the debtors are taking
7 in connection with essential suppliers and foreign creditors.
8 He would testify that FTI has held conference calls and
9 provided reporting to the committee's financial advisors on a
10 periodic basis and has developed with Mesereau, the committee's
11 financial advisors, Your Honor, a document which I'd like to
12 mark as Exhibit 1, Your Honor, and pass up to the Court if I
13 may.

14 THE COURT: Okay.

15 MR. BUTLER: It's been reviewed with Mr. Rosenberg.

16 THE COURT: All right.

17 MR. BUTLER: Which provides a tracking system of old
18 transactions under various authorities the debtors obtained in
19 their first-day orders and detailed information about
20 transactions of \$2 million or more.

21 Mr. Eisenberg would testify that the committee's
22 professionals have not expressed any concerns with the
23 company's process or decision-making process and would testify,
24 Your Honor, that in his opinion, in FTI's opinion, the
25 committee's proposed requirement of pre-notification and then

1 some process which could include trying to come to court would
2 add another layer of complexity to the debtors' carefully
3 organized and streamlined processes for reviewing payments
4 under these orders and for making determinations as to whether
5 such payments are justified.

6 Mr. Eisenberg would testify that in his opinion the
7 weekly reporting mechanism provides an oversight to the
8 committee and gives the committee to opportunity to come into
9 court at any time if they're dissatisfied with the debtors'
10 operations under these orders.

11 Mr. Eisenberg would testify that in his opinion the
12 added complexity of prior notification to the committee which
13 includes some form of approval process could delay the
14 decision-making process which in turn would endanger the
15 debtors' abilities to avoid interruption in their supply chain.

16 He would testify that while in many instances, the
17 delay would not be overly problematic -- and this is to your
18 point, Your Honor -- in many instances, that delay would not be
19 overly problematic. In those instances, we're paying in
20 essential suppliers pre-petition claim is urgent, in Mr.
21 Eisenberg's opinion any delay at all in the same-day reaction
22 could be catastrophic and could cause the shutdown of plants.

23 Mr. Eisenberg would testify that the debtors are
24 unable to predict when such an urgent supplier will come in
25 requesting payment, and therefore, in Mr. Eisenberg's opinion,

1 the committee's pre-notification procedures are impractical and
2 that the reporting -- the weekly reporting system should
3 provide appropriate oversight, Your Honor.

4 Your Honor, that is the sum and substance of Mr.
5 Eisenberg's testimony.

6 THE COURT: Okay. Does anyone want to cross-examine
7 Mr. Eisenberg?

8 I have just one question and maybe the next proffer
9 will answer this, which is the proffer said there was basically
10 a group of around twenty people that function on this
11 worldwide.

12 Is there some person or maybe a subset of that group
13 that has the final say or is there delegation in all cases
14 given to, you know, a regional manager or whatever?

15 MR. EISENBERG: As indicated, there are twenty
16 individuals that are part of the essential supplier review
17 process, once that process is complete and the members or a
18 member, a team member on that essential supplier team has a
19 recommendation to treat this vendor as an essential supplier,
20 that recommendation then goes to a committee.

21 That committee is made up of multi-functional --
22 multi-functional departments including treasury, Delphi legal,
23 GSM which is a global supply management team as well as FTI
24 with some support to Skadden to fully review and concur that,
25 in fact, the recommendation is appropriate and that the

1 supplier should be treated as an essential supplier on the
2 motion.

3 THE COURT: Okay. And that applies for the foreign
4 vendors, too?

5 MR. EISENBERG: That applies for the foreign vendors
6 as well.

7 THE COURT: And the committee meets telephonically or
8 by email; it doesn't have to be in person?

9 MR. EISENBERG: The committee actually gets together
10 in person or by phone several times a day, because of the
11 timeliness that the committee needs to make a decision.

12 THE COURT: Okay. How often in your experience is it
13 that the committee turns down a request?

14 MR. EISENBERG: It's fairly significant in that the
15 number -- the statistics that Mr. Butler shared suggest that
16 the committee is turning down a significant number of the
17 requests or is requesting additional information before making
18 decision.

19 THE COURT: Okay. Okay. Thanks.

20 MR. BUTLER: Your Honor, I should indicate for the
21 digital record that's being made that the person that was
22 speaking just now was Randall eisenberg, the FTI witness that
23 was proffered.

24 THE COURT: Okay. Thank you.

25 MR. BUTLER: Your Honor, our other proffer would be

1 the proffer of John Sheehan. Mr. Sheehan, will you stand,
2 please?

3 Mr. Sheehan, Your Honor, would testify that he is our
4 vice president and chief restructuring officer, and as such,
5 has responsibility and involvement in all aspects of the
6 company's restructuring efforts and is familiar with the
7 debtors' supply chain and the means by which the debtors are
8 paying the suppliers while the company is in Chapter 11.

9 Mr. Sheehan would testify that he is very familiar
10 with the process and determinations are being made regarding
11 various suppliers and whether they should be eligible for
12 essential supplier treatment, foreign vendor treatment or
13 vendor rescue program treatment.

14 Mr. Sheehan would testify that the debtors supply
15 method includes the use of sole source suppliers as has been
16 described in Mr. Eisenberg's testimony where the debtors
17 purchase all of the requirements for a particular part from one
18 supplier.

19 Mr. Sheehan would testify that each of these parts
20 have to meet demanding specifications imposed both by Delphi
21 and OEM customers, and therefore, are not subject to quick
22 replacement, takes months and Mr. Sheehan would testify to make
23 any changes in the sole suppliers.

24 Mr. Sheehan would say that because it is so difficult
25 to replace a supplier that stops performing or cannot continue

1 its business operations because of financial difficult and
2 because the just-in-time supply method causes a situation where
3 suppliers have some amount of leverage on the issues dealing --
4 that the debtor is dealing with right now, because they
5 actually do have -- Mr. Sheehan would testify the ability to
6 shut down aspect parts of Delphi and parts of -- and our OEM
7 customers.

8 And Mr. Sheehan would testify that while the company
9 is very proud of the fact that the company has functioned
10 throughout this Chapter 11 case without any interruption in
11 customer supply, that has not been the case with Delphi Supply.
12 In fact, Delphi Supply has had some interruptions that have had
13 to be dealt with on an emergency basis as some suppliers have
14 had to be dealt with on a very critical time path.

15 Mr. Sheehan would testify that if a supplier were to
16 decide not to -- Delphi, the consequences to Delphi would
17 likely mean that Delphi would have to shut down a line until it
18 received the parts and could start manufacturing product again.

19 Mr. Sheehan would testify that this could mean the
20 debtors would not have sufficient prior to ship customers (sic)
21 and in less than one day, the debtors would shut down or could
22 shut down one of their customer's production lines.

23 Mr. Sheehan would testify that when contemplating a
24 Chapter 11 filing, there was substantial discussions regarding
25 the possible consequences of a filing on Delphi's suppliers

1 including certain of Delphi's suppliers' ability to perform
2 under the terms of their contracts if their pre-petition
3 invoices were not paid.

4 Mr. Sheehan would note that because the debtors' use
5 of sole suppliers and just-in-time inventory, the debtors were
6 very concerned that these suppliers could hold Delphi hostage
7 and that Delphi would be placed in a situation where it could
8 end up shutting down its own lines or worse yet, disappointing
9 its customers and not providing just-in-time inventory to its
10 customers.

11 Mr. Sheehan would testify that there are several
12 consequences of a shutdown if that were to occur. First, Mr.
13 Sheehan would testify there would be direct financial damage to
14 Delphi because of the debtors' high-fixed costs and the fact
15 that the debtors would not be generating revenue in a no-ship
16 situation.

17 Second, Mr. Sheehan would testify there would be
18 financial damages that would occur as a result of the
19 customer's manufacturing facilities being shut down, and that
20 Delphi has been informed by at least one customer that those
21 claims would exceed \$10 million per line per day.

22 Mr. Sheehan would testify that the shutdowns would
23 have a negative effect on Delphi's customer relationships and
24 ability to reorganize in this Chapter 11 case and would affect,
25 in Mr. Sheehan's view, Delphi's potential ability to emerge

1 from Chapter 11.

2

3 Mr. Sheehan would testify that as a result of these
4 serious concerns, Delphi worked with his advisors to design a
5 program they believed would give Delphi the flexibility to
6 support Delphi suppliers in a way that would ensure that
7 Delphi's operations would be able to continue.

8 The result of that work, in part, is the essential
9 supplier program and vendor -- foreign vendor program that are
10 currently at issue.

11 Mr. Sheehan would also testify that part of the pre-
12 notification that the committee is demanding also involves not
13 just the payment of pre-petition claims, but also Delphi's
14 ordinary course programs including its vendor rescue program.

15 Mr. Sheehan would testify that the vendor rescue
16 program is an ordinary course program. It's maintained by
17 everybody in the industry in one form or another. It has been
18 a regular part of Delphi's GSM or purchasing organization since
19 the spinoff from General Motors, and that the company spends
20 somewhere in the general range of \$50 million a year in dealing
21 with trade vendor rescue operations and that it's a critical
22 part and just a cost of doing business, and an ordinary course
23 part of its operations.

24 Mr. Sheehan would testify that the reason the debtors
25 did not agree to the creditors' committee pre-notification

1 requests is because Delphi is very concerned that it needs to
2 maintain the ability to respond at a moment's notice to a call
3 from a supplier where the supplier found themselves in a
4 situation where they were financially unable to ship or had
5 similar circumstance.

6 Also, Mr. Sheehan would testify that Delphi wanted to
7 have similar flexibility for dealing with its foreign suppliers
8 or any others who refused to ship. In addition to this
9 flexibility, however, Delphi wants to make sure that when a
10 decision was made to pay a supplier on account of a pre-
11 petition debt, there was a process in place with specific
12 criteria that would make Delphi comfortable that these
13 suppliers should be paid and that that process would be
14 reviewed periodically, as frequently as weekly, with the
15 creditors' committee so they would have adequate oversight of
16 that process.

17 Mr. Sheehan would testify that one of the key reasons
18 as chief restructuring officer that he helped developed the
19 essential supplier program was to provide support for the
20 suppliers in financial distress, and in doing this, Delphi
21 evaluates among other things the supplier's financial condition
22 including reviewing historical and projected financials as well
23 as their various financing arrangements.

24 Because of Delphi's vendor rescue program which as
25 Mr. Sheehan would have testified has been maintained for many

1 years, Delphi has much institutional knowledge about troubled
2 suppliers and an entire organization that works in the troubled
3 supplier programs.

4 Mr. Sheehan would testify that these people whose --
5 their job and it's their expertise to deal with the suppliers
6 in distress.

7 Finally, Mr. Sheehan would say that while not every
8 request that comes through the general -- the GSM purchasing
9 organization of Delphi is emergent and needs to be dealt with
10 in the same day, that at least in the first few weeks of this
11 case, many of the requests that have come in have had to be
12 dealt with on a real-time basis.

13 Mr. Sheehan believes and would testify that in his
14 business judgment and that of the debtors, the inability -- the
15 inability to continue that operation subject to a weekly
16 oversight review would significantly jeopardize the debtors'
17 operations because as he understands what the requirement to
18 pre-notify and consult would be.

19 Mr. Sheehan would also testify that as explained to
20 him, the creditors committee's request is not simply an email
21 notification, but rather is a dynamic process where the
22 committee would have the opportunity to review information,
23 make inquiries, consult with the debtors' financial advisors
24 and take other things that would interfere in Mr. Sheehan's
25 view with the ability of the debtors to operate their

1 businesses, and that is his concern.

2 And, Your Honor, the one thing I would point out --
3 that would be the sum of Mr. Sheehan's testimony. I would
4 correct the proffer to the extent that when I was giving the
5 numbers, when I said \$10 million per line, it should be \$10
6 million per plant per day.

7 THE COURT: Okay. All right. Does anyone want to
8 cross-examine Mr. Sheehan?

9 I have a question, because we have not really focused
10 on the vendor rescue aspect of this.

11 Does the debtor provide the same or a similar report
12 on -- you know, a historical report, I guess, currently on a
13 weekly basis on venue rescue as well as sole source and foreign
14 creditor payments?

15 MR. SHEEHAN: The report that we're providing to the
16 creditors' committee comprises all of those elements --

17 THE COURT: It includes vendor rescue?

18 MR. SHEEHAN: Yes, sir.

19 THE COURT: Okay. I mean, obviously, there are
20 different issues with regard to each one. I mean, vendor
21 rescue is -- in some sense, it strikes me as probably something
22 that's more -- that's more typical to the industry, but at the
23 same time, may involve more qualitative analysis at some point
24 as to whether, you know, a vendor deserves to be rescued, you
25 know, those sorts of things or how to wean yourself off of a

1 vendor.

2 So I'm just -- but, basically, it's all included in
3 this -- in the report.

4 MR. BUTLER: Your Honor, that's the commitment the
5 debtors have made. In fact, the essential -- the vendor rescue
6 program at certain dollar levels is very diversified around the
7 company's operations in forty countries, and one of the things
8 we're doing right now is working on a protocol to gather that
9 information and report it, but the answer is, yes, the debtors
10 intend to report all activity under the vendor rescue program
11 to the creditors' committee as soon as those protocols can be
12 put in place, and those that are large enough that actually
13 come to headquarters, they would get on a weekly basis.

14 THE COURT: Okay. What is -- is there a dollar
15 amount per week where it has to go to headquarters?

16 MR. SHEEHAN: Historically, to the extent that we were
17 extending a financial loan to a supplier, those would come to
18 the headquarters. To the extent it was other types of
19 financial assistance that was within the management
20 responsibility of the divisional management to extend that
21 financial --

22 THE COURT: Okay. So it's really not keyed to a
23 dollar amount as opposed to the type of support you give.

24 MR. SHEEHAN: Yes, sir.

25 THE COURT: The form of support.

1 MR. SHEEHAN: Yes, sir.

2 THE COURT: Okay. All right. Thank you.

3 MR. BUTLER: Your Honor, I'd just like again the
4 digital record to indicate that the individual providing that
5 testimony on the record was John Sheehan, the company's chief
6 restructuring officer.

7 THE COURT: Okay. All right. Do you have anything --
8 I mean, I think I understand your argument and the witnesses,
9 but before Mr. Rosenberg speaks, do you have anything more to
10 add or do you want to wait to hear him first?

11 MR. BUTLER: Yeah. I mean, I certainly appreciate
12 that Mr. Rosenberg and the committee are trying to provide the
13 oversight they think is within their fiduciary responsibility
14 to provide. We simply would ask the Court, and I'll respond to
15 any comments -- we simply would ask the Court to approve a
16 process which says we report on a weekly basis in retrospect as
17 opposed to stopping the process as transactions come up and
18 have to seek somebody out, provide them information, because
19 it's not just providing information because what happens if the
20 committee calls back and says, well, I have an issue here.
21 Does that mean under this order we're supposed to stop? I mean
22 --

23 THE COURT: Well, what if it doesn't? What if the
24 order just says that -- makes it crystal clear that the
25 committee has no consent or veto right, and in fact, would not

1 be able to seek any relief ex parte?

2 MR. BUTLER: Well, Your Honor, then I would point out
3 that if that's really what they're asking for, then I would
4 point out that this is really much ado about nothing and almost
5 a trap for the debtors because our ability to make sure we hit
6 that bogey every day during the week as opposed to making sure
7 we've summarized everything properly, it's been vetted by FTI
8 and then submitted in a comprehensive report that's been
9 checked on a weekly basis, that the committee ought to stand
10 down from that now because if what they're saying is all we
11 need to do is send an email and nothing else, then what does
12 that do? What's the purpose of that?

13 THE COURT: Well, I think they're saying more than
14 that, but that -- no, but they're saying give us reasonable
15 notice of a payment over a million dollars. If it's a case
16 which I accept may be the case in certain circumstances that
17 it's reasonable to say we're making the payment now or we're
18 making the payment as soon as the check clears or the wire
19 instruction is clear, then that's fine, and that's -- you know,
20 they're going to have to live with that because it came up that
21 morning.

22 On the other hand, if it's something that people have
23 been deliberating over for, you know, a week because it affects
24 how you're going to deal with a particular vendor in the
25 future, you know, maybe they should get more notice than that.

1 MR. BUTLER: Well, Your Honor, they do get -- in their
2 reports, they get -- they do get notice of what the backlog and
3 what's being considered over time.

4 I mean, the more important question is -- I mean, and
5 obviously, Your Honor will be the one to decide this.

6 THE COURT: Well, that's -- I didn't understand that.
7 Are they -- are they being updated as to what's upcoming in the
8 next week if it's predictable?

9 MR. BUTLER: Well, Your Honor, it's not -- I don't
10 know if it's in the next week but part of this report shows
11 them all the open items that are open in the -- the number of
12 items and the items that are actually open here are at least in
13 summary form. It's not given to them on a format that says
14 gee, you know, here's every single transaction that's been
15 honored, but Your Honor, the question is, I mean, how much, and
16 Your Honor will be the one to tell us, but how much oversight -
17 - our vendor rescue program is an ordinary course program.
18 We're a \$28 billion company. All right.

19 Where in the case law does it say that a creditor
20 committee gets to come in and interfere with that ordinary
21 course process at a million-dollar level.

22 THE COURT: Well, the issue is, you know, what's
23 ordinary course. There may be -- I mean, even with the
24 critical -- with the vendor rescue program, there may be --
25 there may well be a point when you're dealing with a particular

1 vendor where you're making decisions that are more long term.

2 You know, there's -- there are great studies that
3 deal with traders, for example, when they -- you know, they
4 make a bad investment and then to get their money back, they
5 keep investing in the same thing, and that's how hedge funds
6 get into trouble sometimes, and you know, I think that's the
7 type of thing that the committee wants to focus on, not the
8 everyday stuff, but you know, there's a time where this
9 particular vendor even though they're a sole source, we should
10 wean ourselves away from.

11 Those are the types of things I think they're
12 focusing on, and maybe you're right. Maybe it isn't to give
13 the committee notice of the actual imminent payment but to get
14 more involved in the backlog analysis recognizing that there
15 are some payments that just come up because the guy says, look,
16 we're pulling the trucks away now, and you have to make the
17 payment, but I think -- you know, in their due diligence, they
18 just want to know not just that the money has already gone out
19 the store and we should stop doing this in the future, but
20 what's impending.

21 There may be some things that, you know, I accept,
22 you cannot give them advance notice of that because it just
23 comes up that morning and you only have about three hours to
24 give the wire instructions, but there are other things that,
25 you know, clearly, where there's a review committee at the

1 debtor to consider with a lengthy checklist what the first-tier
2 people are recommending, you know, to somehow involve the
3 committee in that process.

4 And, when I say the committee, it's clear to me at
5 least that what's contemplated here is a committee
6 professional, designated professional and with suitable
7 confidentiality so that you're not getting this, you know,
8 deliberate process out there --

9 MR. ROSENBERG: That's correct, Your Honor. We're
10 talking about a Mesereau process here.

11 THE COURT: I mean, I'm not -- from your testimony and
12 from what Mr. Rosenberg is saying, I get a very clear
13 impression that unlike some cases, the debtors have a
14 reasonable process in place to deal with these very difficult
15 issues and that there's a suitable number of people involved
16 and a suitable reporting process involved so that, you know,
17 there's a governor on the natural instinct of the people who
18 deal directly with these folks to make sure that only the
19 absolute necessary amounts are paid.

20 So I don't think -- and I think the committee accepts
21 that. So what we're really talking about here is just to give
22 them some eyes into that process to make sure it's happening.
23 Now I know you have the reports and that's where it's mostly
24 looked at, but since it's all retroactive, you know, a fair
25 amount of money could go out the door that way.

1 I don't -- there hasn't really been any testimony as
2 to whether in the weekly meetings that Mesereau has with the
3 company and FTI they're also talking about what's in the
4 pipeline. I think that frankly if they do that, that may be a
5 lot more effective than having a notice process that by and
6 large, you know, really highlights the problem in a way that's
7 probably counterproductive for everybody, which is, you know,
8 either making it so that it's notice -- effectively after the
9 money has gone out of the door anyway or leads to people trying
10 to stop something that's imminent, whereas if you have
11 something where you're talking about what's in the pipeline or
12 what's a backlog, then at least then the company can have the
13 benefit of the committee's thinking on the issue.

14 MR. BUTLER: Your Honor, I don't think we would have
15 any problem listing out backlog items that are in the backlogs
16 where the requests are a million dollars or two million dollars
17 or more. That's part of a reporting mechanism. I mean, we've
18 committed to have FTI and Mesereau meet every single week and
19 talk about these things.

20 The issue -- and I don't think we'd have any problem.
21 If we know about a backlog, we're already giving them the
22 backlog information on the front page, and what you're saying
23 is you want us to cull out of the back page, you know, the
24 individual transactions that are over a million or two million
25 dollars. I don't think we have any issues with that.

1 MR. ROSENBERG: Including names, Mr. Butler? Because
2 you refused to do that until now.

3 MR. BUTLER: Right. We haven't included names because
4 the names are not relevant, Your Honor. We believe that the
5 committee should not be sitting around, which is comprised of -
6 -

7 THE COURT: Well, but again, is this just Mesereau? I
8 mean, is this --

9 MR. ROSENBERG: We're talking Mesereau, Your Honor.
10 We're talking Mesereau pursuant to a confidentiality agreement.

11 THE COURT: I think they need to -- they need to be
12 able to say as part of this -- well, it depends obviously on
13 where you are, but I can certainly contemplate situations where
14 it is important to know who the person is because, you know,
15 maybe they know that that company is going to go out of
16 business anyway no matter what you do. You know, that's a
17 conceivable thing.

18 So I think unless there are concerns about Mesereau
19 not keeping the names in confidence, I think it's worthwhile to
20 have the name --

21 MR. BUTLER: Your Honor, our concern has been that
22 this is a very sensitive -- very, very sensitive issue, and it
23 was unclear to us why -- you know, when we describe the
24 supplier, why it is that Mesereau has to know the exact name.
25 The only thing that can -- you know, we don't know what good

1 comes of that.

2 THE COURT: Well, for example, what if that supplier
3 has already gotten a big payment, you know. I mean, maybe it's
4 relevant as opposed to just that it's fresh each time. I could
5 see situations where it would be relevant, but -- you know, and
6 again, Mesereau is not -- they're not stupid. They know that
7 they face real liability if that gets out. So...

8 MR. BUTLER: And, Your Honor, just to be clear. This
9 isn't about Mesereau. We work them in lots of cases. They're
10 one of the best people around. So this is not about them.
11 It's a concern about the very core of this case is our supply
12 network, and the company is extremely proprietary about these
13 issues, and it is devoting enormous time and resources -- I
14 mean, we talk about this committee, Your Honor. This isn't
15 like a committee that comes together once a week. These folks
16 are working twelve, sixteen hours a day --

17 THE COURT: No, I appreciate that, but I just think
18 that generally speaking, the creditors' committee has been
19 quite reasonable on these issues. I could see other committees
20 have a very different reaction although I think that would have
21 been a mistake, but I can see other committees taking that
22 reaction.

23 So I think they're acting responsibly here, and in
24 that context, I don't think this is overreaching to say that
25 they should be involved or one person or one designee from

1 Mesereau should be involved in that backlog type of discussion.

2 MR. BUTLER: I think --

3 THE COURT: I think that's money well spent.

4 MR. BUTLER: Your Honor, I think we're fine on the
5 backlog discussion. I think we'd want to -- if we talk about
6 names, I think we want to talk about orally. I mean, there's a
7 real sensitivity --

8 THE COURT: Oh, yeah, that's fine. I don't have a
9 problem with that.

10 MR. BUTLER: -- about not putting things in writing,
11 about not having our suppliers who are involved in this
12 process, they don't want their names --

13 THE COURT: This is -- this is all -- seemingly all
14 oral anyway, the governing group so I don't have a problem with
15 that.

16 MR. BUTLER: This is all written. So we'll keep this
17 the way it is, but if they have questions about specific
18 people, we'll provide the designated Mesereau person with that
19 --

20 THE COURT: Okay.

21 MR. BUTLER: -- and we'll deal with it, Your Honor,
22 if it's okay with the Court, we'll deal with it on the backlog
23 report. I think that's fine. We're not -- we're fine with the
24 reporting.

25 THE COURT: Okay. I think that's -- as a practical

1 matter, that just --

2 MR. ROSENBERG: Mr. Butler, the Mesereau folks did not
3 hear -- oh, excuse me, Your Honor. I didn't mean to interrupt.
4 Forgive me.

5 THE COURT: No, go ahead.

6 MR. ROSENBERG: The Mesereau folks did not hear your
7 last comment about what would be oral and what would be
8 written. Could you repeat that, please?

9 MR. BUTLER: I said this report -- the report -- we
10 would include -- we would expand this report to include backlog
11 of approvals over \$2 million. This backlog thing -- so they
12 know what the backlog is. We would not identify in this
13 report, we'd divide every transaction but not by name, and if
14 they want to have an oral conversation with FTI about
15 particular names, particular -- they can do that on a oral
16 basis with a sole designee from Mesereau because this is just
17 very sensitive. This information is very, very sensitive.

18 MR. ROSENBERG: Your Honor, how are they supposed to
19 know what they want to have a discussion with unless they ask
20 for all the names to decide --

21 THE COURT: Well, I think they can ask by -- you
22 know, I think that's okay. They may ask for the names, but --
23 I think it varies. I mean, I think the name is more relevant,
24 for example, in some cases for a large transaction with a
25 vendor rescue program. It may not be that relevant for a

1 foreign vendor, you know, except maybe to see if they have
2 property in the U.S.

3 You know, if they've said -- if they say to whoever
4 is their counterpart, you know, have you run all the traps as
5 to whether this foreign vendor has real property in the U.S.
6 and they say yes, and they've done a couple of -- or some --
7 you know, two or three of their own diligence on whether they
8 can rely on those representations, then maybe they don't have
9 to ask for every foreign vendor's name, for example.

10 MR. ROSENBERG: No, that of course is true, Your
11 Honor, but apropos exactly the kinds of examples that you were
12 giving, we want to know who we're talking about.

13 THE COURT: Well --

14 MR. ROSENBERG: Should they be weaning, should they be
15 rescuing --

16 THE COURT: No, but they can ask -- they can ask for
17 that. I just don't -- I agree. I think that once there's a
18 piece of paper in their hand, they're going to be under a fair
19 amount of pressure from the committee to, you know, show us
20 that paper, and I understand the company's concern about that.

21 MR. ROSENBERG: Your Honor, they know how to say no.

22 THE COURT: Well, I know, but paper has a life of its
23 own.

24 MR. ROSENBERG: The other point, Your Honor, assuming
25 that that's your ruling is that Mr. Butler said over two --

1 THE COURT: Yeah, I caught that. I caught that. I
2 thought it should be --

3 MR. ROSENBERG: So did we, Your Honor. We said one
4 million.

5 THE COURT: I think it should be a million. It's --
6 you know, a million dollars is still a lot of money.

7 MR. BUTLER: It is, Your Honor.

8 MR. ROSENBERG: I would point out again, Your Honor,
9 there were only two since the filing over two million. There
10 would be not much reporting if that was --

11 THE COURT: Okay. And the other caveat is if this
12 doesn't work on either side, you both can come back to me. If
13 you're getting hung up and feel -- notwithstanding that there's
14 no veto right, there's no consent right, you still feel like
15 this is gumming up the works, you can come back.

16 Mr. Rosenberg, the committee is always free to come
17 back and say we've learned that this program is not being
18 administered properly or we have other concerns or whatever. I
19 don't think that's going to happen from what I've heard. This
20 seems to be actually -- it seems to have been run responsibly,
21 and I note -- I've signed four orders to show cause from Mr.
22 Togut's firm so th debtor is clearly looking to enforce its
23 rights on vendors that don't live up to their responsibilities.

24 So it does seem to me like it's being run responsibly
25 and this is more a matter of just clarifying the committee's

1 due diligence.

2 MR. BUTLER: Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: We'll make --

5 THE COURT: Is this -- I guess this could be
6 memorialized. The record is pretty clear what's to be done,
7 but we might as well memorialize it.

8 MR. BUTLER: We'll make some changes in the order
9 because -- we'll submit it this afternoon, Your Honor.

10 MR. ROSENBERG: We'll take a shot at it, Your Honor.
11 If we throw up our hands and say as per the record, we'll let
12 you know.

13 THE COURT: Okay.

14 MR. BUTLER: Thank you, Your Honor.

15 THE COURT: Okay. That's it.

16 MR. ROSENBERG: Thank you, sir.

17 THE COURT: Okay. Thank you.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

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Kathleen Price, AD/T 550

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